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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/897,165	06/29/2001	Jim Hochberg	4024-4006	1448
7590 09/09/2004			EXAMINER	
MORGAN & FINNEGAN, L.L.P.			PHAN, HANH	
345 Park Avenue			ART UNIT	
New York, NY 10154-0053			PAPER NUMBER	
			2633	

DATE MAILED: 09/09/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

09/897,165

Applicant(s)

HOCHBERG ET AL.

Examiner

Hanh Phan

Art Unit

2633

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

**A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.**

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 29 June 2001.  
2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.  
3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-49 is/are pending in the application.  
4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.  
5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.  
6) ☒ Claim(s) 1-49 is/are rejected.  
7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.  
8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.  
10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).  
11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All b) ☐ Some \* c) ☐ None of:  
1. ☐ Certified copies of the priority documents have been received.  
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)  
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)  
3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date 09/01/2004.  
4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.  
5) ☐ Notice of Informal Patent Application (PTO-152)  
6) ☐ Other: \_\_\_\_\_.

## **DETAILED ACTION**

### ***Claim Objections***

1. Claim 21 is objected to under 37 CFR 1.75(c), as being of improper dependent form for failing to further limit the subject matter of a previous claim. Applicant is required to cancel the claim(s), or amend the claim(s) to place the claim(s) in proper dependent form, or rewrite the claim(s) in independent form.

In claim 21, the phrase "the method of claim 20 wherein the method of claim 1 is only performed in the first partition" is unclear.

### ***Claim Rejections - 35 USC § 103***

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claims 1-49 are rejected under 35 U.S.C. 103(a) as being unpatentable over Grasso et al (US Patent No. 5,355,250 cited by applicant) in view of Czarnocha et al (US Patent No. 6,504,630).

Regarding claims 1, 11, 19, 22, 25, 26, 31, 39-45 and 49, referring to Figure 3, Grasso discloses in an optical transceiver (i.e., optical transceiver 2, Fig. 3) having a photodetector (i.e., photodetector R2, Fig. 3) and a laser transmitter (i.e., laser transmitter T2, Fig. 3), a method of minimizing a risk of

Art Unit: 2633

damage to human tissue, caused by an exposure to an amount of laser radiation in excess of a maximum permissible exposure level, the method comprising:

monitoring at the photodetector (i.e., photodetector R2, Fig. 3) for receipt of an optical data signal;

determining, using a controller (i.e., protection device 19, Fig. 3), if a received optical data signal satisfies at least one expected activity criterion; and

if the received optical data signal does not satisfy the at least one expected activity criterion, determining that an eye safety fault condition exists and causing a shut down the laser transmitter (col. 1, lines 55-60, col. 2, lines 47-67, col. 3, lines 1-20, col. 4, lines 16-67 and col. 5, lines 1-47).

Grasso differs from claims 1, 11, 19, 22, 25, 26, 31, 39-45 and 49 in that he fails to teach an optical transceiver having at least two photodiodes and at least two laser transmitters. However, Czarnocha in US Patent No. 6,504,630 teaches an automatic power shut-down system with an optical transceiver having at least two photodiodes and at least two laser transmitters (Figs. 1, 6 and 7, col. 9, lines 58-67 and col. 10, lines 1-62, col. 3, lines 60-67, col. 4, lines 1-32 and lines 62-67 and col. 5, lines 1-46). Therefore, it would have been obvious to one having skill in the art at the time the invention was made to incorporate the optical transceiver having at least two photodiodes and at least two laser transmitters as taught by Czarnocha in the system of Grasso. One of ordinary skill in the art would have been motivated to do this since Czarnocha suggests in column 9, lines 58-67 and col. 10, lines 1-62, col. 3, lines 60-67, col. 4, lines 1-32 and lines 62-67 and col. 5, lines 1-46 that using such the optical transceiver

Art Unit: 2633

having at least two photodiodes and at least two laser transmitters has advantage of allowing easily detecting the signals to control the laser transmitter and to protect the eyes of the maintenance staff.

Regarding claims 2-7, 16-18, 23, 24, and 27-30, the combination of Grasso and Czarnocha teaches comparing the optical data signal to an expected signal (col. 4 of Grasso, lines 16-67 and col. 10 of Czarnocha, lines 25-62).

Regarding claims 8-10 and 46-48, the combination of Grasso and Czarnocha teaches determining that the eye safety fault condition has been corrected, and automatically turning on at least one shut down transmitter (col. 4, lines 16-67 and col. 5, lines 1-14 of Grasso and col. 10 of Czarnocha, lines 48-62).

Regarding claims 12-15, 20, 21 and 32-38, the combination of Grasso and Czarnocha teaches the transmission portion comprises at least two partitions (Figs. 1, 6 and 7 of Czarnocha)

### ***Conclusion***

4. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Hanh Phan whose telephone number is (571)272-3035.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jason Chan, can be reached on (571)272-3022. The fax phone number for the organization where this application or proceeding is assigned is (703)872-9306.

Art Unit: 2633

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703)305-4700.

A handwritten signature in cursive script, appearing to read 'Hanh Phan', is written over a horizontal line.

Hanh Phan

09/01/2004